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Roy E. Henderson TR/AS New Ulm Broadcasting, CO.
13999 S. West Bayshore Drive
Traverse City, MI 49684

In re: KNRG(FM), Smithville, TX
Facility I.D. No.: 15113
Roy E. Henderson TR/AS New
Ulm Broadcasting, CO ("Henderson")
BPH-20090827ACZ

Dear Mr. Henderson:

This letter refers to the above-captioned minor change application, as last amended on December 21, 2009, to propose the reallocation of FM Station KNRG, Channel 222A at New Ulm, to Smithville, Texas.

Background. This application was filed pursuant to Section 73.3573(g) of the Commission's rules, which permits the modification of a station's authorization to specify a new community of license ("CofL") without affording other interested parties an opportunity to file a competing expression of interest. Any reallocation proposal must result in a preferential arrangement of allotments.¹ We make this determination using the FM allotment priorities set forth in *Revision of FM Assignment Policies and Procedures*.² This application would provide a first local service to Smithville, Texas under Priority (3).

Discussion. We cannot approve the proposed city of license modification of FM Station KNRG from New Ulm, Texas to Smithville, Texas. Specifically, the proposed reallocation would be removing the sole local service assigned to New Ulm since FM Station KNRG is the only station licensed to that community. Henderson recognizes this and requests a waiver. In *Community of License*, the Commission stated that removing a sole local service from a community presumptively disserves the public interest and only in "rare circumstances" that such a removal would be warranted.³ Your proposal would remove the sole authorized local service to New Ulm. In this instance, removing a sole local

¹ See *Modification of FM and TV Authorizations to Specify a New Community of License ("Community of License")*, Report and Order, 4 FCC Rcd 4870 (1989), *recon. granted in part*, Memorandum Opinion and Order, 5 FCC Rcd 7094 (1990).

² *Revision of FM Assignment Policies and Procedures*, Second Report and Order, 90 FCC 2d 88 (1988). The FM allotment priorities are: (1) First fulltime aural service, (2) Second fulltime aural service, (3) First local service and (4) Other public interest matters. Co-equal weight is given to Priorities (2) and (3).

³ *Community of License*, 5 FCC Rcd at 7096.

service from New Ulm in order to provide a first local service to the *larger* community of Smithville would not qualify as a rare circumstance.

For the reasons stated below, your waiver request is denied. It is well established that a party seeking a waiver “faces a high hurdle,”⁴ must demonstrate that deviation from the general rule is warranted by special circumstances, and its waiver request will serve the public interest.⁵ We find that you have not met this burden. Specifically, you stated the followings reasons for granting your waiver request; (1) the removal of Station KNRG from New Ulm would not impact the historic service of the public interest; (2) New Ulm is not an incorporated city and has not shown any added population or business growth; (3) granting the move of Station KNRG to Smithville will not have an impact on the interference or short-spacing contours; (4) the grant of Station KNRG would provide a 70 dBu city-grade contour over one hundred percent of Smithville; (5) Smithville does not have a first local station; (6) Smithville has maintained a growth in population and business since the 2000 U.S. Census; and (7) a very real and significant need exists for a first local station to be located in Smithville.

Accordingly, we find that the above reasons are not sufficiently warranted by special circumstances to deviate from the general prohibition against removal of a community’s sole local service. Henderson has not demonstrated that New Ulm is barred from being allotted a local channel.⁶ We recognized that New Ulm is not an incorporated city and has not shown any added population or business growth. However, this does not provided sufficient reason to overcome the presumption of community status. We continue to find that New Ulm is a community for allotment purposes, warranting a first local service.

Our policies on allowing broadcast stations to change their communities of license are based on Section 307(b) principles, to create and retain a fair, efficient, and equitable distribution of radio service. Our determination is based on the FM allotment priorities.⁷ Retention of the first local transmission service at New Ulm, and the institution of first local transmission service at Smithville, implicates Priority 3 - first local transmission service. Notwithstanding that the existing and proposed arrangements of allotments both trigger the same allotment priority, the reallocation proposal requests to remove New Ulm’s sole local operating service. In this regard, the Commission strongly disfavors the removal of a community’s sole local service. This policy is subject, as are all Commission policies, to waiver under appropriate circumstances.⁸ However, the Commission emphasized in *Community of License Reconsideration Order* that “the fact that a proposal would create a new local service (at the expense of an existing service) is not sufficient, by itself, to warrant a waiver.” Rather, such a proposal “is presumptively contrary to the public interest. As such, the public has a legitimate expectation that existing service will continue, and

⁴ *WAIT Radio*, 418 F.2d at 1157.

⁵ See *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990), citing *WAIT Radio*, 418 F.2d at 1157-59.

⁶ See *Greenwood, Seneca, Aiken and Clemson, South Carolina, and Biltmore Forest, North Carolina*, Report and Order, 2 FCC Rcd 3583 (MMB 1987) (finding that Biltmore Forest meets the Commission’s criteria of a community even though it lack an active commercial life); see also, *Essex, New York*, Report and Order, 4 FCC Rcd 5775 (MMB 1989) (allotting a first local service to a community that lack a “thriving” local business community).

⁷ *Id.* note 2.

⁸ See *Northeast Cellular Telephone Co. v. F.C.C.*, 897 F. 2d 1164, 1166 (D.C. Cir. 1990)(stating that a waiver is appropriate only if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest).

this expectation is a factor weighed independently against the service benefits that may result from reallocoting of a channel from one community to another, regardless of whether the service removed constitutes a transmission service, a reception service, or both. Removal of service is warranted only if there are sufficient public interest factors to offset the expectation of continued service. In this case, we find that you have not demonstrated any sufficient public interest factors that would offset the removal of New Ulm's sole local service, thus, warranting the grant of a waiver in this instance.

Conclusion. In light of the above, the waiver request IS HEREBY DENIED and the application, BPH-20090827ACZ, IS HEREBY DISMISSED. This action is taken pursuant to Section 0.283 of the Commission's Rules.

Sincerely,

A handwritten signature in blue ink, appearing to read "Rodolfo J. Bonacci".

Rodolfo Bonacci
Assistant Chief
Audio Division
Media Bureau

cc: Gary L. Graham, Engr.